

BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Petition for Reinstatement )  
of Revoked Certificate of: )

OAH No. L-9501208

JAMES R. LUCHS, M.D. )  
675 Roycroft Avenue )  
Long Beach, CA 90814 )

Respondent. )

DECISION

On November 2, 1995, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, presided over a quorum of the Division of Medical Quality of the Medical Board of California, Panel A, which heard this matter.

Samuel K. Hammond, Deputy Attorney General represented the Attorney General of California.

James R. Luchs, M.D., petitioner, appeared on his own behalf.

Argument was had and the matter was submitted.

FINDINGS OF FACT

I

On July 30, 1994, James R. Luchs, M.D., (petitioner) filed a Petition for Reinstatement of Revoked Certificate with the Division of Medical Quality of the Medical Board of California (Division). Petitioner seeks reinstatement of his physician and surgeon's certificate which was revoked effective May 30, 1991.

On March 16, 1995, in San Diego, California, Joyce A. Wharton, Administrative Law Judge, Office of Administrative Hearings, State of California, conducted an administrative hearing on the petition. In a Proposed Decision dated April 7, 1995, Judge Wharton granted the petition for reinstatement and placed petitioner's certificate on probation for a period of five years on terms and conditions.

On May 18, 1995, the Division voted not to adopt the proposed decision and notified the parties it would decide the case upon the record.

## II

### HISTORY OF DISCIPLINE

Petitioner was licensed to practice medicine in California in January, 1966. On January 7, 1991, Accusation No. D-4100 was filed against petitioner. A full hearing on the Accusation was held after which a proposed decision was issued and adopted by the Board on April 30, 1991. Pursuant to the decision, petitioner's license was revoked effective May 30, 1991.

## III

### THE UNPROFESSIONAL CONDUCT

The findings of the Board's decision establish that in March, 1989, petitioner was convicted, on his plea of guilty, of one count of unlawful sale of a controlled substance. The conviction resulted from petitioner's conduct in 1988, illegally selling prescriptions for Dilaudid (Schedule II controlled substance), Tetracycline, Viokase and K-Lyte (dangerous drugs) to DEA undercover operatives. It was found that petitioner knowingly engaged in the illegal sale of triplicate type prescriptions without any pretense of the existence of any medical indication therefore. The decision further found that, from 1986 to mid-1988, petitioner illegally distributed extremely large amounts of controlled substances and drugs from his medical office which it was described as a "'drug mill' of major proportions." The street value of the drugs involved exceeded two million dollars. The Administrative Law Judge rejected petitioner's effort to blame the situation on his alcoholism and his office manager, and found that he was a knowing and active participant in the illegal activity.

## IV

### REHABILITATION

Petitioner is 56 years old. He received his medical degree in 1963 from the University of Illinois. After two years in the Air Force, petitioner practiced for two years as a family physician and then took a residency in radiology at Cedars-Sinai Medical Center in Los Angeles. From 1971 to 1983 he practiced radiology at various locations in California and Hawaii, often working as locum tenens. He left the practice of radiology in Hawaii due to drinking problems. In 1983, he entered a private practice in Compton, California, and switched from radiology to a

general practice. It was in this practice that his illegal conduct occurred.

As a result of his conviction, petitioner was sentenced to three years in state prison. He was incarcerated from November 29, 1988, to July 13, 1990, at which time he was placed on three years parole. On August 8, 1991, he was discharged from parole after satisfactorily serving the required minimum thirteen months.

Petitioner is a recovering alcoholic and has been sober since November 29, 1988. He began attending AA meetings while in prison and when released continued with regular weekly meetings. In August, 1990, he began treatment at the Long Beach V.A. Medical Center Substance Abuse Treatment Clinic. He attended twice weekly group therapy sessions until October, 1992, when his treatment was reduced to one group therapy session per week. His progress has been steady and excellent. Petitioner's treatment counselors indicate that throughout treatment he has demonstrated an ability to discipline himself and has shown strength of character and a strong commitment to positive values. The prognosis for long term sobriety is good. Respondent currently attends biweekly group therapy sessions at the Long Beach Clinic and continues his regular attendance at AA which he considers his main strength in the continuing commitment to sobriety. He exercises regularly for his physical and mental health. He maintains good relationships with his family and friends.

Petitioner is candid and sincere in discussing his problem with alcohol and the illegal activities which resulted in the loss of his medical license. The Division's investigator determined that his references were well aware of the details of his situation. Petitioner's sobriety has helped him to acknowledge the seriousness of his prior misconduct and to accept full responsibility for it. He realizes that, while his abuse of alcohol may have had some part in his misconduct, it does not excuse it. He expresses sincere sorrow for what he has done and understands that the wreckage of his life and career was his own doing. Petitioner expressed appreciation for the chance to petition for reinstatement of his license; he knows it is up to him to earn the confidence of the Medical Board and is willing to accept and abide by any conditions on the reinstatement of his license that the Board deems necessary.

V

**PROFESSIONAL REPUTATION**

Since his release from prison petitioner has been supporting himself by taking premature distributions from his IRA fund and by working intermittently as a salesman for a catalogue company and for telemarketing companies. The telemarketing

companies are bona fide, not the disreputable "boiler rooms", and petitioner sold various products including tickets to the Long Beach Opera. He did not sell securities or investments.

Early in his career and prior to his problems with alcohol, petitioner was considered to be a bright, capable, competent, compassionate and caring physician. In his letter of reference for petitioner, Blaine L. Montgomery, M.D., states:

"I believe that he has mobilized all of those initial personality traits and intellect that allowed him to excel scholastically and be trained originally as a physician. I also believe that he realizes the loss that his association with illicit substances has caused him personally, and to the society at large. I feel that he has rejoined the sober society and could most benefit all of us by being allowed to act in the capacity for which he is trained, as a physician."

Petitioner continued CME on release from prison by subscribing to the American Family Physician and participating in its Clinical Quiz program to acquire Category I CME credits. He has accumulated 186 Category I CME credit hours since June 1990. Petitioner subscribes to Current Medical Diagnosis and Treatment; he has free access to the medical library at the Long Beach V.A. Medical Center where he regularly reads the New England Medical Journal and the JAMA; and he frequently consults the current PDR to keep up on current pharmaceuticals.

Petitioner wants to return to the practice of family medicine, focusing on the diagnosis and treatment of general illnesses without performing surgery or obstetrics. He does not want to engage in a sole practice but is interested in working in a hospital or clinic setting where he will not be responsible for managing an office.

## VI

It is noteworthy that petitioner's rehabilitation efforts were voluntary and consistent. He has maintained sobriety for six and one-half years, during almost five of which he has been out of custody. He is commended for undertaking these efforts, and encouraged to continue them. Likewise, his efforts to remain current are encouraging, but petitioner should recognize reading journals is not the same as active participation in CME courses, particularly if he hopes to enter the field of family practice after working many years in radiology.

The overriding factor in deciding this petition is the large scale criminal activity in which petitioner engaged for many years. It has been less than five years since his

certificate was revoked, and it is too early to determine if petitioner has indeed turned his life around. He has worked hard at changing his own behavior, but he has not done enough to regain the public trust he forfeited when he engaged in his criminal activities. His illegal furnishing of large amounts of drugs harmed the public. To regain the trust of the public, and to assure the public he will not again engage in criminal conduct, petitioner must show by deeds, not words, that he is committed to serving the public.

DETERMINATION OF ISSUES

I

Cause was not established pursuant to Business and Professions Code section 2307 to grant petitioner's request for reinstatement of his physician and surgeon's certificate by reason of Finding VI.

ORDER

The petition of James R. Luchs, M.D., for reinstatement of his physician and surgeon's certificate is denied.

This decision shall become effective on the 9th of December, 1995.

IT IS SO ORDERED this 9th of November, 1995.



\_\_\_\_\_  
IRA LUBELL, M.D.  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
STATE OF CALIFORNIA

BEFORE THE DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for )  
Reinstatement of Revoked Certificate )  
of: )

JAMES RICHARD LUCHS, M.D. )

File No. 11-94-40201  
OAH No. L-9501208

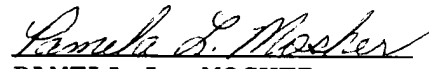
Respondent. )

ORDER DELAYING DECISION

Pursuant to section 11373 of the Government Code, the Division of Medical Quality, finding that a further delay is required by special circumstances, hereby issues this order delaying the decision for no more than 30 days from October 13, 1995 (when the 100 day period expires) to November 12, 1995.

The reason for the delay is as follows: This case is scheduled for discussion and decision at the next regularly scheduled meeting set for November 2, 1995, of the Division of Medical Quality. The additional time is needed in order to allow the Board to meet and complete its work in this case, including time after the meeting to draft and type the appropriate pleading, and to effect service on the parties.

DATED: October 3, 1995.

  
PAMELA L. MOSHER  
Enforcement Program

MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for )  
Reinstatement of a Revoked )  
Certificate Against: )

JAMES R. LUCHS, M.D. )  
Certificate # G-11590 )

Respondent. )

No. L-9501208  
11-94-40201

NOTICE OF NON-ADOPTION OF  
PROPOSED DECISION

NOTICE TO ALL PARTIES:

YOU ARE HEREBY NOTIFIED that the Division of Medical Quality voted not to adopt the proposed decision recommended in this case. The Division itself will now decide the case upon the record, including the transcript.

To order a copy of the transcript, please contact the Transcript Clerk, Office of Administrative Hearings, 1350 Front Street, suite 6018, San Diego, CA 92101, (619) 525-4475.

After the transcript has been prepared, the Division will send you notice of deadline date to file your written argument. Your right to argue on any matter is not limited. The Division is particularly interested in arguments on why a different decision should not be made.

In addition to written argument, oral argument may be scheduled if any party files with the Division within 20 days from the date of this notice, a written request for oral argument. If a timely request is filed, the Division will serve all parties with written notice of the time, date and place of hearing.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Division. The mailing address of the Division is as follows:

Division of Medical Quality  
MEDICAL BOARD OF CALIFORNIA  
1426 Howe Avenue  
Sacramento, CA 95825  
(916) 263-2389

Dated: May 18, 1995

BY *Pamela L. Mosher*  
Pamela L. Mosher  
Enforcement Analyst  
Medical Board of California

**BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Petition for Reinstatement )	
of Revoked Certificate of: )	OAH No. L-9501208
	)
JAMES R. LUCHS, M.D. )	
675 Roycroft Avenue )	
Long Beach, CA 90814 )	
	)
Respondent. )	
_____ )	

**PROPOSED DECISION**

On March 16, 1995, in San Diego, California, Joyce A. Wharton, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Steven V. Adler, Deputy Attorney General represented the Division of Medical Quality of the Medical Board of California.

James R. Luchs, M.D., petitioner, appeared on his own behalf.

Evidence was received, the record was closed and the matter was submitted.

**FINDINGS OF FACT**

**I**

On July 30, 1994, James R. Luchs, M.D., (petitioner) filed a Petition for Reinstatement of Revoked Certificate with the Division of Medical Quality of the Medical Board of California (Division). Petitioner seeks reinstatement of his physician and surgeon's certificate which was revoked effective May 30, 1991.

**II**

**HISTORY OF DISCIPLINE**

Petitioner was licensed to practice medicine in California in January, 1966. On January 7, 1991, Accusation No. D-4100 was filed against petitioner. A full hearing on the



Accusation was held after which a proposed decision was issued and adopted by the Board on April 30, 1991. Pursuant to the decision, petitioner's license was revoked effective May 30, 1991.

### III

#### THE UNPROFESSIONAL CONDUCT

The findings of the Board's decision establish that in March, 1989, petitioner was convicted, on his plea of guilty, of one count of unlawful sale of a controlled substance. The conviction resulted from petitioner's conduct in 1988, illegally selling prescriptions for Dilaudid (Schedule II controlled substance), Tetracycline, Viokase and K-Lyte (dangerous drugs) to DEA undercover operatives. It was found that petitioner knowingly engaged in the illegal sale of triplicate type prescriptions without any pretense of the existence of any medical indication therefore. The decision further found that, from 1986 to mid-1988, petitioner illegally distributed controlled substances and drugs from his medical office. The Administrative Law Judge rejected petitioner's effort to blame the situation on his alcoholism and his office manager, and found that he was a knowing and active participant in the illegal activity.

### IV

#### REHABILITATION

Petitioner is 56 years old. He received his medical degree in 1963 from the University of Illinois. After two years in the Air Force, petitioner practiced for two years as a family physician and then took a residency in radiology at Cedars-Sinai Medical Center in Los Angeles. From 1971 to 1983 he practiced radiology at various locations in California and Hawaii, often working as locum tenens. He left the practice of radiology in Hawaii due to drinking problems. In 1983, he entered a private practice in Compton, California, and switched from radiology to a general practice. It was in this practice that his illegal conduct occurred.

As a result of his conviction, petitioner was sentenced to three years in state prison. He was incarcerated from November 29, 1988, to July 13, 1990, at which time he was placed on three years parole. On August 8, 1991, he was discharged from parole after satisfactorily serving the required minimum thirteen months.

Petitioner is a recovering alcoholic and has been sober since November 29, 1988. He began attending AA meetings while in prison and when released continued with regular weekly meetings.

In August, 1990, he began treatment at the Long Beach V.A. Medical Center Substance Abuse Treatment Clinic. He attended twice weekly group therapy sessions until October, 1992, when his treatment was reduced to one group therapy session per week. His progress has been steady and excellent. Petitioner's treatment counselors indicate that throughout treatment he has demonstrated an ability to discipline himself and has shown strength of character and a strong commitment to positive values. The prognosis for long term sobriety is good. Respondent currently attends biweekly group therapy sessions at the Long Beach Clinic and continues his regular attendance at AA which he considers his main strength in the continuing commitment to sobriety. He exercises regularly for his physical and mental health. He maintains good relationships with his family and friends.

Petitioner is candid and sincere in discussing his problem with alcohol and the illegal activities which resulted in the loss of his medical license. The Division's investigator determined that his references were well aware of the details of his situation. Petitioner's sobriety has helped him to acknowledge the seriousness of his prior misconduct and to accept full responsibility for it. He realizes that, while his abuse of alcohol may have had some part in his misconduct, it does not excuse it. He expresses sincere sorrow for what he has done and understands that the wreckage of his life and career was his own doing. Petitioner expressed appreciation for the chance to petition for reinstatement of his license; he knows it is up to him to earn the confidence of the Medical Board and is willing to accept and abide by any conditions on the reinstatement of his license that the Board deems necessary.

## V

### PROFESSIONAL REPUTATION

Since his release from prison petitioner has been supporting himself by taking premature distributions from his IRA fund and by working intermittently as a salesman for a catalogue company and for telemarketing companies. The telemarketing companies are bona fide, not the disreputable "boiler rooms", and petitioner sold various products including tickets to the Long Beach Opera. He did not sell securities or investments.

Early in his career and prior to his problems with alcohol, petitioner was considered to be a bright, capable, competent, compassionate and caring physician. In his letter of reference for petitioner, Blaine L. Montgomery, M.D., states:

"I believe that he has mobilized all of those initial personality traits and intellect that allowed him to excel scholastically and be trained originally as a physician. I also believe that he realizes the loss that his association

with illicit substances has caused him personally, and to the society at large. I feel that he has rejoined the sober society and could most benefit all of us by being allowed to act in the capacity for which he is trained, as a physician."

Petitioner continued CME on release from prison by subscribing to the American Family Physician and participating in its Clinical Quiz program to acquire Category I CME credits. He has accumulated 186 Category I CME credit hours since June 1990. Petitioner subscribes to Current Medical Diagnosis and Treatment; he has free access to the medical library at the Long Beach V.A. Medical Center where he regularly reads the New England Medical Journal and the JAMA; and he frequently consults the current PDR to keep up on current pharmaceuticals.

Petitioner wants to return to the practice of family medicine, focusing on the diagnosis and treatment of general illnesses without performing surgery or obstetrics. He does not want to engage in a sole practice but is interested in working in a hospital or clinic setting where he won't be responsible for managing an office.

## VI

It is noteworthy that petitioner's rehabilitation efforts were voluntary and consistent, and that he has maintained sobriety for six and one-half years, during almost five of which he has been out of custody. It has been more than seven years since the illegal conduct and petitioner has had no subsequent criminal problems. He seems well grounded in the reality of his situation and wisely appreciates the strictures he must place on any future medical practice.

Petitioner has established that he has been successful in his criminal parole and in his personal rehabilitation. Reinstatement of his license at this time is appropriate. However, because of the seriousness of the misconduct which resulted in the conviction and license revocation, and because of his time away from practice, a period of probation with conditions to insure current competence and monitoring are required. Reinstatement of the license with such conditions would not be contrary to interests of public health and welfare.

## DETERMINATION OF ISSUES

### I

Cause was established pursuant to Business and Professions Code section 2307 to grant petitioner's request for reinstatement of his physician and surgeon's certificate by reason of Findings IV, V and VI.

### ORDER

The petition of James R. Luchs, M.D., for reinstatement of his physician and surgeon's certificate is granted subject to the following terms and conditions:

#### **SPECIAL CONDITIONS**

1. The license shall be on probation for five (5) years from the effective date of this decision.
2. As a condition precedent to the commencement of any practice of medicine, and within 90 days of the effective date of this Decision, petitioner shall take and pass an oral or written examination, in a subject or subjects to be designated and administered by the Division or its designee. If petitioner fails this examination, he must take and pass a re-examination consisting of a written as well as an oral examination. The waiting period between repeat examinations shall be at three month intervals until success is achieved.

Petitioner shall not practice medicine until he has passed the required examination and has been so notified by the Division in writing. Failure to pass the required examination no later than 100 days prior to the termination date of probation shall constitute a violation of probation.

3. Petitioner may apply for an unrestricted DEA permit. However, he is permitted to prescribe, administer, dispense or order controlled substances listed in Schedules II, III and IV of the California Uniform Controlled Substances Act for inpatients in a hospital setting, and for outpatients in a supervised clinic setting, and not otherwise.
4. Petitioner shall maintain a record of all controlled substances prescribed, dispensed or administered by him during probation, showing all the following: 1) the name and address of the patient, 2) the date, 3) the character and quantity of controlled substances involved, and 4) the indications and diagnosis for which the controlled substance was furnished.

Petitioner shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by

the Division or its designee, upon request. On a quarterly basis, petitioner's physician monitor shall review these records and include in the periodic report to the Division a statement regarding petitioner's compliance with Condition #4.

5. Petitioner shall not possess or keep at his office or any other location any controlled substances as defined in the California Uniform Controlled Substances Act, or dangerous drugs as defined by section 4211 of the Business and Professions Code.
6. Petitioner shall abstain completely from the use of alcoholic beverages.
7. Petitioner shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Division or its designee.
8. Within 90 days of the effective date of this Decision, petitioner shall submit to the Division for its prior approval, an intensive clinical training program. The exact number of hours and the specific content of the program shall be determined by the Division or its designee. Petitioner shall successfully complete the training program and may be required to pass an examination administered by the Division or its designee related to the program's content.
9. Within 60 days of the effective date of this Decision, petitioner shall submit to the Division for its prior approval a course in Ethics which he shall successfully complete during the first year of probation.
10. Within 60 days of the effective date of this Decision, petitioner shall submit to the Division for its prior approval a plan of practice in which his practice shall be monitored by another physician in petitioner's field of practice, who shall provide periodic reports to the Division.

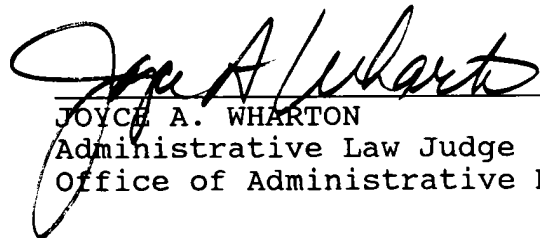
If the monitor resigns or is no longer available, petitioner shall, within 15 days, move to have a new monitor appointed, through nomination by respondent and approval by the Division.

11. Respondent is prohibited from engaging in solo practice.

## STANDARD CONDITIONS

12. Petitioner shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.
13. Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.
14. Petitioner shall comply with the Division's probation surveillance program.
15. Petitioner shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.
16. The period of probation shall not run during the time petitioner is residing or practicing outside the jurisdiction of California. If, during probation, petitioner moves out of the jurisdiction of California to reside or practice elsewhere, he is required to immediately notify the Division in writing of the date of departure, and the date of return, if any.
17. Upon successful completion of probation, petitioner's certificate will be fully restored.
18. If petitioner violates probation in any respect, the Division, after giving him notice and the opportunity to be heard, may revoke probation and reinstate the original disciplinary order. If an accusation or petition to revoke probation is filed against petitioner during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

Dated: April 7, 1995

  
JOYCE A. WHARTON  
Administrative Law Judge  
Office of Administrative Hearings